THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

SECOND APPEAL No.216 OF 1996

JUDGMENT:-

Defendants 1 and 2 in O.S.No.7 of 1977 on the file of the Subordinate Judge , Razole, are the appellants herein.

2. The suit was one filed by the plaintiff for partition of the schedule properties contending that one Pallaiah was the father of the 1st defendant and the 1st defendant is related to them. As the 1st defendant has no children, defendants 1 and 2 have adopted the plaintiff on 03.03.1957 and they are 'Jangams' by caste. At the time of adoption, the plaintiff was aged about five years and the properties are joint family properties. After the adoption, the 1st defendant begot a son, who died and subsequently a daughter was born. Thereafter, differences arose between the parties and consequently, the suit was filed for partition of the properties.

3. The 1st defendant, who contested the suit, disputed the factum of adoption and validity of it. According to defendants 1 and 2, there was no need to adopt the plaintiff because by the alleged date of adoption, they were young and chances of begetting children are not lost. But, however, it was admitted that the plaintiff was brought fostered. Therefore, the plaintiff cannot claim any right. So also the nature of the plaint 'A' and 'B' schedule properties being joint family properties and the share of the plaintiff are also disputed.

4. After considering the evidence on record, the trial Court has passed a decree for partition of the schedule 'A' and 'B' schedule properties and the allotment of 6/16th share in the 'A' schedule

property and with regard to 'B' schedule property the suit was dismissed. An appeal was carried by defendants 1 and 2 and the appellate Court while accepting the factum of adoption confirmed the right of partition and granted 1/4th share in 'A' schedule property and rejected the claim for 'B' schedule property. As against that, the present second appeal is filed and the appeal was admitted on 18.04.1996 on question of law as framed in the grounds of appeal, which are as follows:

1) Whether or not the finding of the lower appellate Court that, the plaintiff is the adopted son of defendants 1 and 2 is illegal and erroneous?
2) Whether the court below failed to see that when the alleged adoptive father (D1) and D2 his wife, are very young people with the prospect of having children of their own, it was highly improbable that they would have taken the plaintiff in adoption at their own request as laid down by the Supreme Court in AIR 1964 S.C. 136?
3) Whether the Court below has failed to see that the plaintiff has not specifically pleaded the customary adoption in his community and as such, the Court below erred in looking into the evidence, particularly when there was no 'Dattahomam' or Agnihotram ceremony?
4) Whether the Court below has erred in holding that the plaint 'A' schedule properties are the joint family properties in which the plaintiff has 1/4th share, when the sale deeds A6, A7 and A8 are in the name of the 1st defendant and the burden was on the plaintiff to establish that they were purchased with joint family funds?

5. **POINTS**:

So far as the fact that the plaintiff lived with the 1st defendant for a long time and the 1st defendant got him admitted in the school and the school records shows that the 1st defendant is the father of the plaintiff is taken as a strong circumstance to accept the case of the plaintiff with regard to the adoption. Merely because the deed of adoption is not there, it does not mean that there was no factual adoption. The most important document relied on by the Courts below is Ex.A.5, which is the registration extract of the sale deed, whereunder the plaintiff also joined in execution of the sale deed along with the 1st defendant's father, 1st defendant and the plaintiff was represented by the 1st defendant as he was minor mentioning that he is the adopted son of the 1st defendant. Therefore, this document, which is old document and the conduct of the 1st defendant clearly goes to show that the claim of the plaintiff for adoption is true.

6. So far as the ceremonies for the adoption are concerned, it is in the evidence of the defendants and others that performance of the 'Dattahomam' was not necessary in the community to which they belong. Therefore, it cannot be said that there is no valid adoption. Both the Courts on proper appreciation of the evidence and also the documents have come to a concurrent finding that there is no material warranting interference and there is no substantial question of law as sought to be canvassed and the question of law as farmed does not survive for consideration in view of the evidence available on record.

7. Accordingly, the Second Appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand

closed.

JUSTICE N.R.L. NAGESWARA RAO

Date:10.07.2012
INL